

ORIGINAL



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2006 NOV 28 P 2:40

AZ CORP COMMISSION
DOCUMENT CONTROL
November 20, 2006

MARK J. FUMUSA
3329 OAK SPRINGS DRIVE
P.O. BOX 233
PINE, AZ 85544
(928) 978-0719

NOV 21 2006

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Arizona Corporation Commission
DOCKETED

Jeff Hatch-Miller, Chairman
Kristin K. Mayes, Commissioner
Barry Wong, Commissioner
William Mundell, Commissioner
Mike Gleason, Commissioner

Cc: Dwight Nodes, Admin. Law Judge
Steve Olea, Assistant Director, Utilities
Martin Scott, Jr., Utilities Staff Eng.
Docket Control Staff
Lynn Combs, Consumer Services
Bradley Morton, Consumer Analyst

NOV 28 2006

DOCKETED BY

NR

Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

RE: Pine Water Company Docket W-03512 A-03-0279- Formal Complaint of Violations
of the Commission Order # 67166 Docketed August 10, 2004.

Honorable Commissioners and Staff:

This formal complaint relates to the water hauling charges to the Customers of Pine Water Company ("Pine Water" or "Company") for the billing periods of June and July of 2006. These charges appear to be wholly unnecessary due to the fact Pine Water hauled water by truck (at 40-50 times the cost of water) prior to undertaking "*reasonable efforts to maximize the quantity of water obtained from Company owned wells and wells operated under Water Sharing Agreements, including the company's 1996 Agreement with the Solitude Trails Water Improvement District, as the primary source of water supply*" (emphasis added) as required under the Tariff Schedule attached to Decision # 67166 (Exhibit 1).

Because I am both a water customer of Pine Water living within the CC&N and also the Chairman of the Board of Solitude Trails Domestic Water Improvement District ("STDWID"), I have the unique perspective of having full knowledge of the real facts related to the water hauling situation, when measured against the above italicized requirements of Order# 67166.

A review of facts related to this situation will simplify the basic problem and basis of this formal complaint:

1. On August 4, 2006, I filed a telephonic complaint # 2006-54301 (Exhibit 2) with Lynn Combs related to the "outrageousness" of the high water augmentation surcharges related to my personal bill. Also, there was some other unrecorded discussion

related to the fact additional water was available to Pine Water prior to resorting to hauling water from other locations 30-40 miles away.

2. On August 8 Mr. Hardcastle responded to my complaint with an answer that specified the rate structure and timing requirements of Stage 4 under which the Company must haul supplemental water. Because my initial telephonic complaint was treated only as questioning the excessive costs, the basic question related to the real necessity of hauling water was not asked of Mr. Hardcastle, nor was it answered in his return letter to me (Exhibit 3). Why Mr. Hardcastle referenced "old" Decision number 65914, rather than Decision # 67166 that now applies to this situation was baffling to me.

3. Therefore, on September 11, I wrote directly to Mr. Hardcastle (Exhibit 4), with copies to L. Combs and Kristen Mayes to complain that the real basic question of "necessity of hauling water" was not answered either by Mr. Hardcastle or by the Commission staff. I recently discovered the two ACC copies of my September 11th letter were simply filed by the ACC since (a) my Complaint # 2006-54301 had been closed by the Commission staff without my knowledge, (b) my follow-up letter of September 11th letter was simply filed and not treated as a new complaint because it was not directed specifically to the ACC (only a copy), and (c) I did not realize it would help to file my complaint with Docket Control.

4. In my letter of September 11th, I clearly outlined to Mr. Hardcastle and Lynn Combs the facts related to the lack of Pine Water using all the water STDWID consistently makes available (around 1,000,000 gallons per month, or about 20% of all the water distributed by Pine Water). The Table I attached to the September 11th letter is again attached hereto (Exhibit 5) and it clearly indicates the fact water volumes taken from STDWID have decreased steadily over the last few years from over 12 million gallons to 8, to 7, to 6, to 5 million gallons in 2005 and to what looks like probably only another 5-6 million gallons in 2006. Well capacity is still at approximately 1 million gallons per month (12 million gallons per year) with peak production of 1,060,100 gallons (net 927,500 to Pine Water) paid to STDWID in May of this year.

5. Regrettably, the pump on our main well ("BV") did fail in October of this year (discovered by our water person during our ADEQ sample taking, not the Brooke staff that operates the well). This lack of production was immediately corrected once we knew the third pump in 10 years had failed, and it was far after the time period when Mr. Hardcastle hauled water, even though in his letter of August 8th he tries to blame the hauling of water on our lack of having the small capacity Portals III well turned off since he was not taking adequate water to justify that well's operation. In fact, the amount of water taken by Pine Water (Exhibit 6) in May, the month before they first hauled water (late June), was 927,500 gallons after STDWID had consumed 132,600 gallons. In the month they first hauled (late June) they took only 681,000 gallons, after STDWID used 128,500 gallons. In the month of July when they last hauled water (first few days of July), they consumed only a net 252,010 gallons. About the same amount was taken in August when tremendous monsoon storms were in the area minimizing demand.

6. Therefore, it seems there was no good excuse for Pine Water not taking substantially more water from STDWID around the 4th of July. Rather, they just seemed to decide to go ahead and haul water, whether they really needed to or not. Even without the additional storage capacity (which the ACC should require them to construct) to cover the early summer demand spikes (by storing water from late spring recharges of the

aquifers), they certainly could have taken considerably more water from STDWID than what they did actually consume. The complete utilization of the local resources from STDWID (also possibly from others with water sharing agreements) is what is required under Decision # 67166. That did not seem to happen this last summer, especially in terms of STDWID's ability to meet the demand the Company met by using expensive hauled water.

7. In terms of other alternate sources of water that would help avoid hauling of water, the compliance reports filed by the Company under Docket W-01576A-96-0269 for July 2005 thru June 2006 (Exhibit 7) indicate the following:

- a. Projected Magnolia peaked at 1.8 million gallons transported per month in August 2005. It moved 1.4 million gallons in December of 2005 in December of 2005, -0- the first five months of 2006, and was only .533 million gallons in June 2006. With 11 active wells in Strawberry, was a maximum amount of water really pumped through the Magnolia system? Also, with capabilities of up to 1.8 million gallons per month, would not another storage tank in Pine of 300,000-500,000 gallons eliminate the need to haul water at 50 times its normal cost? The one-size fits-all rules of the ACC related to required storage capacity are inadequate to allow reasonable service to communities like Pine that have significant demand spikes during the summer. In reality, there is adequate spring recharge water to meet early summer demand spikes by using the Magnolia pipeline if adequate storage was reasonably required by the ACC.
- b. In terms of the Bloom well (55-571532), production has generally remained in the 400K-600K gallons per month range for years. No steady decline to 50% of capacity, like at the STDWID wells, has seemed to occur with this well.
- c. In terms of the Weeks well (55-565901), production has generally remained in the 300K-600K gallons per month range for years. No steady decline to 50% capacity, like at the STDWID wells, has seemed to occur with this well.

8. It is interesting to note when Mr. Hardcastle orders water to be hauled, he does not have to pay for the water out of his Company's resources, because he is allowed to fully recover both the cost of the water as well as the hauling charges by immediately billing customers under the Augmentation Surcharge program. Thus, he saves the \$1.00/1,000 gallons he would normally pay STDWID; however this hauled water costs me and the other consumers the unnecessary and outrageous amount of about \$50/1000 gallons.

9. If Mr. Hardcastle chooses the Magnolia water or the STDWID water to be his last source of water before hauling, so be it. However, he must take it and if necessary store the Magnolia or STDWID water prior to hauling of water as required under Decision 67166.

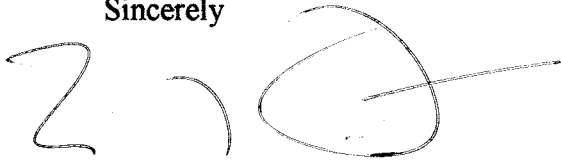
Please note that I have been extremely patient as I wait for a reply from Pine Water. Mr. Hardcastle did send me a letter dated October 13, but it had nothing to do with the questions posed in my September 11th letter.

My suggestions for solving this despicable situation and injustice to the citizens of Pine is for the Commissioners to first require Pine Water Co. to pay back to each consumer all the Water Augmentation Surcharges the Company billed this last summer, and secondly to levy a fine against the Company in an equal amount that is retained by

the ACC to offset the unnecessary grief and expenses the Commission constantly suffers in dealing with Mr. Hardcastle.

Please issue an immediate reply to me as to how this situation will be handled, so that I am not again caught thinking something is being handled, when in fact it is simply being filed away. Your assistance in solving this problem will be appreciated. Please call me at the above number if I can be of further assistance or provide additional information.

Sincerely

A handwritten signature in dark ink, appearing to be 'Mark J. Fumusa'. The signature is stylized with a large, looped 'M' and a 'J' that connects to the 'F'. The 'F' has a long horizontal stroke extending to the right.

Mark J. Fumusa

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

AUG 10 2004

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY

nr

IN THE MATTER OF THE APPLICATION OF
PINE WATER COMPANY FOR A
DETERMINATION OF THE CURRENT FAIR
VALUE OF ITS UTILITIES PLANT AND
PROPERTY, A RATE INCREASE AND FOR
APPROVAL TO INCUR LONG-TERM DEBT.

DOCKET NO. W-03512A-03-0279

DECISION NO. 67166

OPINION AND ORDER

DATES OF HEARINGS:

December 8, 2003 (Public Comment, Pine, Arizona); December 15, 2003, January 12 and 15 2004, February 3, 2004, and March 3, 2004 (Procedural Conferences); March 9, 10, 11, 12, and 19, 2004 and April 2, 2004 (Hearings)

PLACE OF HEARINGS:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Dwight D. Nodes

APPEARANCES:

Mr. Jay Shapiro, FENNEMORE CRAIG, on behalf of Pine Water Company;

Mr. John G. Gliege, on behalf of the Pine-Strawberry Water Improvement District;

Mr. John O. Breninger, in propria persona;

Mr. Robert M. Cassaro, in propria persona; and

Mr. Gary Horton, Staff Attorney, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

I. INTRODUCTION

On May 1, 2003, Pine Water Company ("Pine Water" or "Company") filed an application with the Arizona Corporation Commission ("Commission") for a determination of the current fair value of its utility plant and property, for a rate increase, and for approval of long-term debt. Pine Water is a wholly-owned subsidiary of Brooke Utilities, Inc. ("Brooke"). The Company provides water service to approximately 2,000 customers in Pine, Arizona, an area located 15 miles northwest

1 Company must haul water to the Pine system by truck due to extreme supply shortages. Water
2 hauling is typically employed only in summer months when usage increases substantially due to
3 seasonal residents. We believe the Settlement provides a reasonable resolution of the Water
4 Augmentation Surcharge issue because it requires additional structure and guidelines for ensuring
5 that water hauling is used only as a last resort after all other available supply options have been
6 exhausted. As set forth in proposed Surcharge tariff (Attachment C to Settlement), Pine Water must
7 make reasonable efforts to maximize, as its primary supply sources, water obtained from company
8 owned wells and through water sharing agreements such as the agreement with the Solitude Trails
9 Water Improvement District. The proposed tariff also requires the Company to make reasonable
10 efforts to maximize water purchases from Strawberry for delivery through Project Magnolia (with
11 due regard to protecting the water supply available to Strawberry Water). Only after these lesser-cost
12 sources have been exhausted may the Company haul water by trucks to meet demand. In addition,
13 the Settlement Agreement requires Pine Water to submit quarterly reports specifically describing the
14 quantity of water pumped from each of its sources in the preceding three months. These quarterly
15 reports will be subject to review by Staff and will also be available for inspection at the Company's
16 offices. We believe the quarterly reports will provide a reasonable mechanism for Staff and
17 customers of Pine Water to review the Company's decisions regarding supply sources. In the event
18 that Staff and/or Pine Water's customers believe that the Company has not reasonably complied with
19 the requirements of the Surcharge tariff, those concerns may be raised through an appropriate request
20 for review including, but not limited to, a formal complaint. Given these protections, we find that the
21 Water Augmentation Surcharge tariff is reasonable and should be approved as part of the overall
22 Settlement Agreement.

23 23. The Settlement Agreement requires Pine Water to notify customers of the new rates
24 approved by this Decision in a form approved by Staff. The notice must also include an illustration
25 of the potential impact of the Water Augmentation Surcharge on residential customers. Although we
26 agree that the notice requirement is an essential provision of the Settlement, we will require Staff to
27 submit the Company's proposed notice for our review at least 10 days prior to giving approval to the
28 Company. If no action is taken by the Commission within that 10-day period, the Staff may approve

TARIFF SCHEDULE

Company: Pine Water Company
 Met No.: W-03512A-03-0279
 Phone No.: 1-800-270-6084

Tariff Sheet No.: _____
 Decision No.: _____
 Effective: _____

WATER AUGMENTATION SURCHARGE

Pine Water Company ("Company") is authorized to make monthly adjustments to its rates and charges for water service to recover costs incurred for bulk water purchases and transportation ("Water Augmentation Costs").

The Water Augmentation Surcharge shall be calculated by dividing the total Water Augmentation Costs incurred in a given month by the amount of water sold that month. The resulting rate per 1,000 gallons will then be multiplied by the gallons used in that month for each customer to arrive at the surcharge per 1000 gallons. The resulting Water Augmentation Surcharge will be charged in the next month as a separate line item on the customer's bill.

The Commission recognizes that operational decisions regarding water supply management should be left within the discretion of the Company and that deficient water supply conditions sometimes require the Company to concurrently augment its primary water supplies to meet customer demand. The foregoing notwithstanding, Company shall undertake reasonable efforts to maximize the quantity of water obtained from Company owned wells and wells operated under Water Sharing Agreements, including the Company's 1996 Agreement with the Solitude Trails Water Improvement District, as the primary source of water supply. The Company shall also undertake reasonable efforts to maximize water purchases for delivery through Project Magnolia before resorting to hauling water by tanker truck with due regard to protection of the water supply available to Strawberry Water Company.

SHAPIRO/1530516.1/75208.006

ISSUED: ____/____/____
 Month Day Year

EFFECTIVE ____/____/____
 Month Day Year

ISSUED BY Robert Hardcastle, President

Decision No. _____

DECISION NO. 67166

09/20/2005 11:29
09/20/2005 11:21

9284754168
6026422129

HARVESTHOMES
AZ CORPCOMM

PAGE 01
PAGE 01

928-476-4160

(2)

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Investigator: Lynn Combs

Phone: (602) 542-0488

Fax: (602) 542-2129

Priority: Respond Within Five Days

Complaint No. 2006 - 54301

Date: 8/4/2006

Complaint Description: 01B Billing - Disputed

First:

Last:

Complaint By:

Mark

Furnuse

Account Name:

Mark Furnuse

Home: (928) 978-0719

Street:

P O Box 233

Work:

City:

Pine

Cell:

State:

AZ Zip: 85544

is:

Utility Company:

Pine Water Co., Inc.

Division:

Cool Pines

Contact Name:

Pete Wendeville

Contact Phone: (520) 284-1819

Nature of Complaint:

05/04/06 Customer called and said he paid his bill in protest. His bill was \$274.85 of which water hauling was \$212.75. Water usage was 2302 gal @ .00600 = 13.82 and 3707.40 @ .00700 = 25.95. Customer says the charges are outrageous.

Question to the utility:

What is the formula used to determine the charge passed on to the customer?
"End of Complaint"

Utilities' Response:

08/06/06 Received Utility Response:

August 6, 2006

Mark Furnuse
PO Box 233
Pine, AZ 85544

Re: Arizona Corporation Commission Complaint Number 2006-54301

Dear Mr. Furnuse,

The above referenced complaint was forwarded to my attention for review and response on August 4, 2006.

As you are aware, Pine Water Company Inc. (Pine Water) manages the water conservation stages pursuant to the curtailment plan approved by the Arizona Corporation Commission (A.C.C.) Decision number 65914. This

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P.O. BOX 82218
BAKERSFIELD, CA 93380
CUSTOMER SERVICE CENTER 800-270-6084
FAX 805-746-6981

August 8, 2006

Mark Fumusa
PO Box 233
Pine, AZ 85544

Re: Arizona Corporation Commission Complaint Number 2006-54301

Dear Mr. Fumusa,

The above referenced complaint was forwarded to my attention for review and response on August 4, 2006.

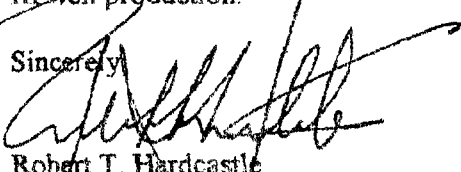
As you are aware, Pine Water Company Inc. ("Pine Water") manages the water conservation stages pursuant to the curtailment plan approved by the Arizona Corporation Commission ("A.C.C.") Decision number 65914. This plan requires water augmentation to begin during Stage 4 conditions and must continue until a Stage 3 condition is reached for forty-eight (48) consecutive hours. Pursuant to this plan, Pine Water secured water augmentation for approximately fourteen (14) days in June and July.

The water augmentation surcharge was also approved in May 2003 by A.C.C. Decision 65914. A copy of this tariff, as well as the aforementioned curtailment plan, is enclosed for your convenience. This tariff provides a detailed explanation of the method used to calculate the surcharge against the 25,030 gallons consumed.

As party to the Water Supply Agreement between Pine Water and Solitude Trails Water Improvement District ("STWID"), we encourage you to actively participate in the reduction of future, potential water augmentation expenses by returning STWID's Portal III well to service. As you advised in your February 20, 2006 correspondence, STWID deemed this well was no longer available for use by Pine Water. Your failure to return the Portals III well to productive service has exacerbated the need for hauling water and contributed to higher water hauling expenses for you and your neighbors.

We look forward to your participation in our water conservation program and the return of STWID's Portals III well production.

Sincerely,


Robert T. Hardcastle
President

CC: ACC, L Combs, Airt # XXXXX7268, MJ, SS

September 11, 2006

Robert T. Hardcastle, President
Pine Water Co., Inc.
P.O. Box 82218
Bakersfield, CA 93380

Re: Response to your letter of 8 August 2006 regarding
Arizona Corporation Commission complaint number 2006-54301

Dear Mr. Hardcastle,

Thank you for your response to my complaint. However, your response, including A.C.C. plans and curtailments, has nothing to do with my complaint. My complaint has to do with your unnecessary water hauling to PWC customers and the unnecessary surcharges that goes with it. You and I both know that PWC has purchased less water each year since 2000, from Solitude Trails Domestic Water Improvement District (STDWID), a major supplier of PWC.

Historically, STDWID has produced approximately one (1) million gallons of water per month, with STDWID customers using/purchasing about 100,000 gallons per month, or about 10% of production. That leaves a surplus of 900,000 gallons per month, or about 90% of STDWID production, or about ten (10) million gallons per year available for PWC to purchase. Please see included STDWID production sheet which demonstrates that PWC's annual purchase went down each year from 12.7 million gallons in 2000 to 5.8 million gallons in 2005. Also note that production availability remains constant.

Since millions of gallons of water remain unpurchased each year by PWC from STDWID, I don't understand why you haul water then charge PWC customers a fat surcharge, instead of purchasing local, inexpensive, excess water from STDWID or other local water producers. Perhaps you have a good reason, yet the A.C.C. Decision # 67166 ruling seems to differ with you (see enclosed), stating that PWC water hauling is to be done as a last resort, after ALL available water supply options have been exhausted.

I look forward to your fair and equitable elimination of future water hauling events and their accompanying augmentation surcharges to PWC customers, because it has been proven there is an abundance of excess water available to PWC and therefore hauling water is unnecessary.

Sincerely,

Mark J. Fumusa

Cc: A.C.C., L. Coombs; Kristen Mayes; P. Brandt, R. Miotto (STDWID Board Members)

2000-2005 STDWID Production/Usage Recap

YEAR	PORTAL III WELL (5GPM) Pumped	% Produced	CIMMERON BVT Well (23 GPM) Pumped	Produced	Total Wells Production	Approx Production Capability	STDWID Water Tank Usage	0% Usage	Pine Water Company Usage	8% Usage
2000	2,394,240	17.9%	10,955,500	82.1%	13,349,740	12,515,200	598,300	4.5%	12,751,440	85.5%
2001	1,010,720	14.3%	6,079,700	65.7%	7,090,420	12,515,200	675,100	9.5%	6,415,320	90.5%
2002	797,540	8.8%	8,451,300	91.4%	9,258,840	12,515,200	859,500	9.3%	8,399,340	90.7%
2003	512,390	5.6%	8,599,100	94.4%	9,111,490	12,515,200	1,121,700	12.3%	7,989,790	87.7%
2004	391,260	4.3%	8,811,100	95.7%	9,202,380	12,515,200	984,500	10.8%	6,207,880	89.2%
2005	196,280	2.8%	6,724,800	97.2%	6,921,080	12,515,200	1,089,800	15.9%	5,821,280	84.1%
All 6 years	5,302,430	9.7%	49,631,500	90.3%	54,933,930		5,348,900	8.7%	49,585,030	90.3%

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2006
STDWID
Production/Usage

Month	Usage Month	PORTALS III WELL	CHAMERON SVT Well	Total Wells Production	STDWID Water Tank	Pine Water Company Usage
		Readings Pumped	Readings Pumped		Readings Usage	
Feb-06		183200	76822200		5294100	
Jan-06		180280	76337400	576,720	6822500	576,520
Mar-06		195020	77602100	688,720	5938800	611,220
Apr-06	(A)	185020	78271300	658,200	6041800	560,900
May-06	(A)	195020	78870300	590,000	6122200	521,700
Jun-06	(A)	195020	79330400	1,060,100	6254800	927,500
Jul-06	(A)	195020	80738500	808,100	6381300	681,500
Aug-06	(A)	185020	81055000	316,500	6445700	252,010
Sep-06	(A)	195020	81371200	316,200	6544000	217,950
Oct-06	(A)	195020	0	0	0	0
Nov-06		0	0	0	0	0
Dec-06		0	0	0	0	0
Jan-07		0	0	0	0	0
Total 2006		-1,280	5,033,870	5,032,540	721,100	4,311,440
		% of total production	% of total production		% Usage	% Usage
		0%	100%		14%	86%

Notes: (A) Pumped turned off

6



for Cal. Inc.
Action Report
Health required by
Number
a No
a Date
Date

at ADNR Number

55-510419
55-510415
55-503958
55-503960
55-503961
55-503963
55-513687
55-513688
55-513689
55-513690
55-513691
55-513692
55-513693
55-513696
55-513704
55-513707
55-513708
55-513709
55-513710
55-513712
55-513715

WSP: 55-512283 STWID
WNP: 55-547849 STWID P-3 Net
1,000 Water used by STWID
WSP: 55-571532 (P7)
WSP: 55-565501 (P7)

Project Manager
Water Trucked into Pine Via Water Tanker

Total

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AZ CORP COMMISSION
DOCUMENT CONTROL

W-01:576A-96-0269
67164
10-Aug-04
3-Nov-05

Quantities of Water Pumped (in thousands)
August-04 September-04

Pine Creek L9	No Pump	No Pump	No Pump
Pine Creek TR B	178,690	67,530	57,310
P-1	585,910	363,340	221,690
CS	31,039	114,128	86,660
P-2	389,230	282,480	194,500
P-3	853,500	1,179,600	924,800
Pine Creek L25	118,490	339,150	163,190
BVT L20C	251,510	217,340	53,300
BVT Lot 6	0	1,510	0
BVT L23A	No Pump	No Pump	No Pump
BVT	495,530	241,370	214,080
Pine Creek L9	No Pump	No Pump	No Pump
BVT	327,590	174,380	137,170
Pine Creek Parcel 17	No Pump	No Pump	No Pump
Strawberry Hollow	No Pump	No Pump	No Pump
P Mt Acres 1.26	No Pump	No Pump	No Pump
Strawberry Hollow	63,410	210,660	0
Strawberry Hollow (dry)	0	0	0
Strawberry Hollow (dry)	No Pump	No Pump	No Pump
Strawberry Hollow (dry)	No Pump	No Pump	No Pump
Strawberry Hollow	1,703,500	341,400	317,000
	113,070	531,950	0
	123,670	47,180	0
	223,110	-121,600	0
	596,800	405,300	337,500
	635,600	378,000	1,351,000
	719,000	1,907,000	0
	0	0	0
	6,593	8,566	4,334